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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/601,773

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EXAMINER

MANOHARAN, MUTHUSWAMY GANAPATHY

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

09/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/601,773

Applicant(s)

YOUNGS ET AL.

Examiner

Muthuswamy G. Manoharan

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 30-34, 39, 40 and 42-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-34, 39, 40 and 42-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed on 6/26/2007 have been fully considered but they are not persuasive.

Examiner respectfully disagrees with applicant's assertion on page 5 with the remarks, "Daley does not, however, teach that broadcasting on a second wireless channel is based on a determination of whether the second wireless handset is in a cell site coverage area".

As pointed out in the Office action McCormick teaches (Col. 6, lines 31-33), "the switch then determines that the feature code is a request for information over a broadcast channel and directs a local site". The feature code indicates whether the second wireless handset is in a cell site coverage area or not. The recitation of the phrase, "directs a local site" further indicates that the handset is in a cell site coverage area.

McCormick did not disclose specifically establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset wherein the second wireless channel is different than the first wireless channel. However, Daley discloses in an analogous art a method of establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset wherein the second wireless channel is different than the first wireless channel ("**staggercast**" over multiple channels, Col. 5, lines 1-10). Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to use the method of

Art Unit: 2617

establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset wherein the second wireless channel is different than the first wireless channel in order to provide additional flexibility to the needs of the subscribers.

It is to noted that, the claim does not indicate when the method of establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset wherein the second wireless channel is different than the first wireless channel is performed when the second wireless handset is in the cell site coverage area or when the second wireless handset is not in the cell site coverage area. Thus the unduly broad claimed limitations are taught by the combination of McCormick and Daley.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as discussed in the Office action, McCormick teaches a method of determining whether the second wireless handset is in the cell site coverage area ("the switch then determines that the feature code is a request for information over a broadcast channel and directs a local

site", Col. 6, lines 31-33). Daley teaches a method of establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset wherein the second wireless channel is different than the first wireless channel ("**staggercast**" over multiple channels, Col. 5, lines 1-10). Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to use the method of establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset wherein the second wireless channel is different than the first wireless channel in order to provide additional flexibility to the needs of the subscribers.

Applicants disclosure in Figure 3 (items 58,62 and 64), further indicates that one could transmit media program on same wireless channel used by the first wireless handset or transmit media program to second wireless handset on different wireless channel.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 2617

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 30-34,39-40,42, and 44-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormick et al. (hereinafter McCormick) (US 6,169,894) in view over Daley (US 5650994).**

Regarding **claim 30**, McCormick discloses a method for providing transmission of a selected media program to a plurality of wireless handsets deployed in a wireless network having at least one cell site coverage area associated therewith (Abstract and Figure 1), the method comprising:

receiving a request to receive a selected media program from a first wireless handset in the cell site coverage area (Figure 3, steps 300 and column 6, lines 17 to 27);

establishing a first wireless channel upon which to broadcast the selected media program in the cell site coverage area (Figure 3, step 310 and col. 6, lines 30-50);

receiving a request to receive the same selected media program from a second wireless handset (inherent based on column 6, lines 59 to 66, as the reference discloses that multiple users may use the same broadcast channel, therefore receiving a request is repeated multiple times); and

in response to the request, determining whether the second wireless handset is in the cell site coverage area ("the switch then determines that the feature code is a request for information over a broadcast channel and directs a local site", Col. 6, lines 31-33).

McCormick did not disclose specifically establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset wherein the second wireless channel is different than the first wireless channel. However, Daley discloses in an analogous art a method of establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset wherein the second wireless channel is different than the first wireless channel ("**staggercast**" over multiple channels, Col. 5, lines 1-10). Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to use the method of establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset wherein the second wireless channel is different than the first wireless channel in order to provide additional flexibility to the needs of the subscribers.

**Claim 40** is rejected for the same reason as set forth in claim 30.

McCormick discloses all the steps/elements of dependent **claims 31 and 47**, including, wherein the selected media program comprises a selection from a group consisting of: a cable program, a television program, a satellite program, and a radio program (column 3, lines 39 to 44).

McCormick discloses all the steps/elements of dependent **claims 32 and 45**, including wherein the selected media program comprises a pre-recorded media program (Col. 3, lines 35-62).

McCormick discloses all the steps/elements of dependent **claims 33 and 46**, including wherein the selected media program comprises a real-time transmission (Col. 3, lines 35-62).

McCormick discloses all the steps/elements of dependent **claims 34 and 48**, including wherein the selected media program comprises a selection from a group consisting of: audio program (Id.), video program, and data transmission (Id.).

McCormick discloses all the steps/elements of dependent **claims 39 and 42**, including multiplexing (inherent in view of column 6, line 35) the media program onto the first and second wireless channels (column 5, lines 20 to 40).

McCormick discloses all the elements of dependent **claim 44**, wherein the source provider is the wireless network (local cell and Figure 1).

McCormick discloses all the elements of dependent **claim 49**, wherein the wireless network communication scheme comprises a selection from a group consisting of: TDMA, FDMA, and CDMA (column 6, line 35).

### ***Conclusion***

Art Unit: 2617

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Muthuswamy G. Manoharan whose telephone number is 571-272-5515. The examiner can normally be reached on 7:00AM-2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eng George can be reached on 571-272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
GEORGE ENG  
SUPERVISORY PATENT EXAMINER